

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION

GENE GALES

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:07cv485WJGJMR

SHERIFF MIKE FARMER; WARDEN  
FRANKLIN D. BREWER; NURSE  
SUSAN COOPER; NURSE CHASTITY  
BROOME; and STONE COUNTY  
BOARD OF SUPERVISORS

DEFENDANTS

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on Plaintiff Gene Gales' objection [156-1] to the Report and Recommendation of Chief United States Magistrate Judge John M. Roper [149-1] entered in this cause on June 23, 2008, and the Amended<sup>1</sup> Report and Recommendation [154-1] of Chief Magistrate Judge Roper entered on July 8, 2008. Also before the Court are the motions for summary judgment filed by Defendants Franklin D. Brewer, Chastity Broome, Susan Cooper, Mike Farmer, and the Stone County Board of Supervisors [99-1, 104-1]; Gales' motion for discovery [123-1]; and motion for review [146-1]; and the motions of the Defendants to strike [138-1] the continued responses to the motion for summary judgment; and to strike [153-1] the notice of appeal filed from the Report and Recommendation.

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<sup>1</sup>An error in calculation of time was made in the original Report and Recommendation which was corrected with a docket annotation issued on July 3, 2008, and with the Amended Report and Recommendation. (Ct. R., Doc. 149, p. 19; Ct. R., Docket Annotation, July 3, 2008; Ct. R. Doc. 154, p. 19.)

The Amended Report and Recommendation determined that the motion for summary judgment filed by the Defendants should be granted, and that all claims against the Defendants, both in their individual and official capacities, should be dismissed with prejudice. (Ct. R., Doc. 154, p. 21.) The Court has thoroughly reviewed the findings in the Amended Report and Recommendation in addition to the various motions filed by the parties. Gales contends that the Chief Magistrate Judge improperly considered the evidence, and asserts that his responses establish this contention. (Ct. R., Doc. 156, pp.36.) He claims his injury warranted medical attention beyond what was rendered by the correctional facility. (*Id.*, p. 6.) Gales further claims that his injury was not diagnosed properly at the facility, and that the Defendants allowed him to suffer in pain by not transporting him to a hospital for treatment. (*Id.*) He states he was entitled to a hearing on the motions. (*Id.*, p. 7.)

Although Gales argues otherwise, the Court can find no grounds to overturn the Amended Report and Recommendation based on Gales' objection and further finds that the Amended Report and Recommendation of Chief Magistrate Judge John M. Roper entered on or about July 8, 2008, should be adopted as the finding of this Court. The Court concludes that the Chief Magistrate Judge's Amended Report and Recommendation correctly found that the motion for summary judgment should be granted. Accordingly, the Court finds that all claims against these Defendants, both in their individual and official capacities, should be dismissed with prejudice. Furthermore, the Court finds that the motions for discovery [123-1]; for review [146-1]; to strike [138-1] the continued responses to the motion for summary judgment; and to strike [153-1] the notice of appeal filed from the report and recommendation should be denied as moot. It is, therefore,

ORDERED AND ADJUDGED that the motions for discovery [123-1]; for review [146-1]; to strike [138-1] the continued responses to the motion for summary judgment; and to strike [153-1] the notice of appeal filed from the report and recommendation be, and are hereby, denied. It is further,

ORDERED AND ADJUDGED that the original Report and Recommendation [149-1] be, and is hereby, denied as moot. It is further,

ORDERED AND ADJUDGED that the defendants' objection [156-1] to the Amended Report and Recommendation entered in this cause on July 8, 2008, be, and is hereby, denied as outlined above. It is further,

ORDERED AND ADJUDGED that the Amended Report and Recommendation [154-1] of Chief Magistrate Judge John M. Roper entered on or about July 8, 2008, is hereby adopted as the finding of this Court. It is further,

ORDERED AND ADJUDGED that the motion for summary judgment [104-1] be, and is hereby, granted. All claims advanced against these defendants acting in their individual and official capacities are dismissed with prejudice. A separate judgment will be entered in accordance with this order as required by Federal Rule of Civil Procedure 58.

SO ORDERED AND ADJUDGED this the 26<sup>th</sup> day of August, 2008.

*Walter J. Fox III*  
UNITED STATES SENIOR DISTRICT JUDGE